

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

MUSE PAINTBAR LLC, and STANLEY FINCH,

Plaintiffs, Docket No.:

-against-

INFLUX CAPITAL GROUP LLC d/b/a INFLUX CAPITAL LLC, CAPITAL ADVANCE SERVICES LLC, TSVI DAVIS a/k/a STEVE DAVIS, JONATHAN BRAUN, YISROEL WEINSTEIN, and SQUARE, INC.,

**NOTICE OF REMOVAL**

Defendants.

-----X

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant, CAPITAL ADVANCE SERVICES LLC (“CAS”), by and through the undersigned counsel, hereby removes this action from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York. In support of this Notice of Removal, CAS states as follows:

**STATEMENT OF RELEVANT FACTS**

1. On or about March 11, 2019, Plaintiffs filed a Summons with Notice against Defendants, INFLUX CAPITAL GROUP LLC d/b/a INFLUX CAPITAL LLC, CAS, TSVI DAVIS a/k/a STEVE DAVIS, JONATHAN BRAUN, YISROEL WEINSTEIN, and SQUARE, INC. Although CAS is alleged to be a Defendant, there was no basis alleged for including CAS in an action with the numerous other Defendants.

2. On April 17, 2019, Plaintiffs served a Complaint, which purports to allege violations of 18 U.S.C. §§ 1962 (RICO), and a series of confused contract, fraud, fraud on the Court, Accounting, and Negligence claims. Although CAS is alleged to be a Defendant, there is no basis alleged for CAS’ joinder in an action with the various other Defendants.

3. A complete list of the documents filed in the state court action is attached hereto as Exhibit 1.

4. All documents filed in the state court action are attached hereto as Exhibit 2.

5. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) because it is not being filed more than thirty days following the date on which CAS received the Complaint.

6. Consent of the other defendants in this action is unnecessary because CAS and the other Defendants are not properly joined to the same action. *See In re Rezulin Prods. Liab. Litig.*, 133 F. Supp. 2d 272, 295 (S.D.N.Y. 2001). On May 1, 2019, counsel for INFLUX CAPITAL GROUP LLC d/b/a INFLUX CAPITAL LLC, TSVI DAVIS a/k/a STEVE DAVIS, and YISROEL WEINSTEIN confirmed their consent to removal. A copy of their written statement of consent is attached hereto as Exhibit 3. On May 1, 2019, Plaintiffs verbally advised the Defendants' attorneys and the State Court that they were discontinuing the action as against Square, Inc., which has not technically noted any appearance in the action. There is no permissible basis upon which JONATHAN BRAUN could be joined to this action with CAS. There is no permissible basis upon which SQUARE, INC., could properly be joined to this action with CAS.

#### **BASIS FOR REMOVAL – FEDERAL QUESTION**

7. Pursuant to 28 U.S.C. § 1441, a defendant may remove any action over which the District Court would have original jurisdiction. Pursuant to 28 U.S.C. § 1331, this Court has original jurisdiction of all civil actions arising out of the laws of the United States.

8. This action purports to allege one claim arising out of the laws of the United States 18 U.S.C. §§ 1962. Exhibit 2, Complaint. The RICO claim is a creature of federal statutory law, and is the Federal Question for which removal of the action from State Court to District Court is properly based. *Churchill Vill., L.L.C. v. GE*, 361 F.3d 566 (9th Cir. 2004)

9. The Supreme Court of the State of New York, County of New York, is located within the Southern District of New York. Venue is proper because the action is being removed to the District Court of the United States for the district and division embracing the place where such action is pending under 28 U.S.C. § 1441(a).

10. Pursuant to 28 U.S.C. §1446(d), a copy of CAS' Notice of Removal is being filed contemporaneously with and served upon the Supreme Court of the State of New York, County of New York. A copy of this written notice is attached hereto as Exhibit 4.

11. Pursuant to 28 U.S.C. §1446(d), a copy of CAS' Notice of Removal is being served upon counsel for all other parties.

12. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure as required by 28 U.S.C. §1446(a).

Dated: Tarrytown, New York  
May 17, 2019

/s/ Christopher R. Murray  
Adam J. Stein, Esq.  
Christopher R. Murray, Esq.  
Stein Adler Dabah & Zelkowitz, LLP  
*Attorneys for Defendant*  
*CAPITAL ADVANCE SERVICES LLC*  
520 White Plains Road,  
Suite 500 – Office 5095  
Tarrytown, New York, 10591  
Tel: (212) 867-5620  
E-Mail: cmurray@steinadlerlaw.com